No. 80-516

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Petitioner,

v.

JAMES L. STEVENS and TRANS WORLD AIRLINES, INC.,
Respondents.

On Writ of Certiorari to the District of Columbia Court of Appeals

---

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION

DANIEL B. EDELMAN
(Counsel of record)
YABLONSKI, BOTH & EDELMAN
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036
202-833-9060

GARY GREEN
Air Line Pilots Association International
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Counsel for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-516

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Petitioner,

v.

JAMES L. STEVENS and TRANS WORLD AIRLINES, INC.,
Respondents.

On Writ of Certiorari to the District of Columbia Court of Appeals

---

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION

This supplemental brief is filed pursuant to Rule 22.6 of the Rules of this Court.

Since the filing of the Petition for Writ of Certiorari in this matter October 1, 1980, the Court on October 13, 1980 granted certiorari in *Barrentine* v. *Arkansas-Best Freight Systems, Inc.*, No. 79-2006. Petitioner suggests the disposition of *Barrentine* is likely to bear on the present Petition.

In *Barrentine*, the Court will review the decision of the United States Court of Appeals for the Eighth Cir-

cuit that an employee's prior submission of his contractual claim for wages for hours worked to a grievance committee, as required by his collective bargaining agreement, foreclosed federal court review of a subsequent claim under the minimum wage provisions of the Fair Labor Standards Act, 29 U.S.C. § 206(b). Here the District of Columbia Court of Appeals held that a discharged employee is entitled, through a suit based on common law tort and contract principles, to *de novo* judicial consideration of the propriety of his discharge notwithstanding the existence of a collective bargaining agreement which provides for an exclusive, final and binding arbitral remedy, and despite the fact that the employee unsuccessfully exercised that remedy.

If the decision of the Eighth Circuit that the arbitral resolution foreclosed Petitioners' independent federal statutory FLSA action is upheld, it will follow *a fortiori* that the Court of Appeals erred in according plaintiff here *de novo* judicial consideration of a claim based, not on an independent federal statute, but on common law tort and contract principles.[1]

On the other hand, if the Eighth Circuit's decision is reversed, it appears likely that the Court will allow *de novo* judicial consideration based on the rationale of *Alexander* v. *Gardner-Denver*, 415 U.S. 36 (1974), only to the extent that Petitioners present claims under an independent federal statute. In *Gardner-Denver*, *supra*, the Court made plain, that, except for causes of action such as those under Title VII based on independent federal statutory rights, the general federal policy favoring

---

[1] Indeed, the argument for preclusion of a *de novo* suit is stronger here since, as set forth in the Petition, p. 6, the precise subject matter of plaintiff's suit was presented and rejected under the contract grievance procedure, whereas in *Barrentine*, Petitioners' FLSA claim was not presented under the grievance procedure.

final disposition of labor disputes through arbitration—and barring *de novo* judicial consideration of the same subject matter—would nevertheless prevail, 415 U.S. at 46, fn. 6. In effect, the decision of the Court of Appeals in this case extends the *Gardner-Denver* exception to arbitral finality to an as yet undefined class of claims based not on independent federal statutory rights but on local common law. Such claims present, at most, "minimal policy interests", *Union de Tronquistas* v. *Flagship Corp.*, 554 F.2d 8, 11 (C.A. 1, 1977) (arbitral interpretation of state regulation regarding computation of annual and sick leave was final and binding arbitral resolution). In the event the decision of the Eighth Circuit is reversed, we suggest that this Court will disapprove the decision of the Court of Appeals here as expanding inappropriately upon the circumstances under which *de novo* judicial consideration is available following conclusion of a final and binding grievance procedure.

CONCLUSION

While we continue to believe the Court of Appeals' decision warrants summary reversal *per curiam*, we suggest that the Court may wish to withhold disposition pending a decision in *Barrentine*.

Respectfully submitted,

DANIEL B. EDELMAN
(Counsel of record)
YABLONSKI, BOTH & EDELMAN
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036
202-833-9060

GARY GREEN
Air Line Pilots Association International
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Counsel for Petitioner